IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. REVISION APPLICATION NO. 298 OF 1998

Union Territory of Dadra and
Nagar Haveli (Forest Dept.,Dadra
& Nagar Haveli, through Public
Prosecutor for Union of India .. Petitioner.

V/s.

1. Minaxi Food Product Pvt.,
Ltd.,Piparia, Silvasa, Dadra
& Nagar Haveli & Anr. .. Respondents.

Mr. D.A.Nalawade for the Petitioner.

Mr.M.S.Mohite for the Respondent No.1.

Mr. D.P.Adsule, APP for the Respondent No.2-State.

CORAM : D.G. KARNIK, J.

DATED : 03RD DECEMBER, 2007.

P.C. :-

. Heard the learned counsel for the appearing parties.

2. This revision application is directed against the order dated 22nd of September, 1998 passed by the Additional Sessions Judge, Dadra and Nagar Haveli at Silvassa. By that order, the Addl. Sessions Judge allowed the revision petition filed by the respondent

No.1 and set aside the order dated 10th of June, 1998 passed by the Chief Judicial Magistrate, Silvassa, rejecting the application of the respondent No.1 for releasing the goods.

3. The respondent No.1 is a private limited company and has set up a unit for production of "Pan Masala" with and without Tobacco, at Silvassa, Dadra and Nagar Haveli. One of the raw materials required by the respondent No.1 for manufacture of Pan Masala is catechu (Katha) which is ordinarily imported by it from outside Silvassa, Dadra and Nagar Haveli. On 4th of December, 1997 officials of the forest department carried out raid in the premises of respondent No.1 and seized 2732 kgs. of catechu (Katha) under a panchanama for the alleged offence of transporting catechu to Silvassa from Hariyana without transit pass or permit. An offence was registered against the respondent No.1. According to the respondent No.1, the seized goods viz. the catechu is in the processed form is not a forest product and therefore, no permit is required for its transportation. Catechu is perishable in nature. It has to be used within a limited time. Therefore, the respondent No.1 made an application before the learned Chief Judicial Magistrate to release the seized catechu on the respondent No.1 executing a supratnama. By an order

dated 10th of June, 1998, the learned Chief Judicial Magistrate, rejected the said application.

4. Aggrieved by the order of the Chief Judicial Magistrate, rejecting the request for releasing the seized goods, respondent No.1 filed a revision application bearing No. 499 of 1998 before the Additional Sessions Judge of Dadra and Nagar Haveli at Silvassa. Before the learned Sessions Judge it was contended that catechu (katha) in the processed form possessed by the respondent No.1 was not a forest produce as defined under section 2(4)(a) of the Indian Forest Act and as such possession thereof could not be said to be invalid. No permission was necessary for its transportation to the union territory of Dadra & Nagar Haveli from Hariyana. This contention found favour with the learned sessions Judge who held that the catechu was a finished product, ready for consumption and could not be said to be a forest produce within the meaning of section 2(4)(a) of the Indian Forest Act. The learned Sessions Judge, therefore, allowed the revision application and directed that the entire seized goods be returned, after retaining 1 kg. catechu/katha for the purpose of evidence in the criminal prosecution which was still pending. That order is impugned in this revision petition.

5. Learned counsel for the State submitted that catechu is a forest produce and it has been so held by the Supreme Court in the case of **State of M.P. vs. S.P. Sales Agencies and Ors., reported in AIR 2004 Supreme Court 2088.** He, therefore, submitted that the order passed by the Sessions Judge holding that the catchu was not a forest produce and directing its release is clearly erroneous.

6. When the matter came up for hearing before me on 20th November, 2007, I asked the learned counsel for the parties whether the catechu was since released in pursuance of the impugned order, any stay was obtained. Time was sought to take instruction. Today, the learned counsel for the petitioner as well as the learned counsel for the Respondent No.1 made a statement before me that in pursuance of the order passed by the learned Sessions Judge on 22nd of September, 1998, the goods in question excluding 1 kg., which was retained for evidence, has already been released and the entire quantity has been collected by the respondent No.1. In view of the fact that the goods have already been released, nothing further survives in this revision application as the order has already been implemented. Though the observation made by the learned sessions

Judge that catechu is not a forest produce is erroneous in view of the decision of the Supreme Court in the case of **State of M.P. vs. S.P. Sales Agencies (supra),** since the goods have already been released, no other relief can be granted to the petitioner except to say that the said observation would not be binding on the Magistrate at the trial. With these observations, the revision application is disposed of.

7. I am informed that the prosecution against the respondent No.1 has not proceeded in view of the fact that the revision application was pending in this court. As the prosecution is very old and the revision application has been disposed of, the learned Magistrate is hereby directed to hear and decide it as expeditiously as possible, preferably within a period of six months.

(D.G.Karnik,J.)

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